

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3422/99 to 3447 of 1999

AND

FIRST APPEAL No 6005/98 to 6007 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  
  2. To be referred to the Reporter or not? : NO
  
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
  5. Whether it is to be circulated to the Civil Judge? : NO
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SPECIAL LAND ACQUISITION OFFICER

Versus

MORESHWAR MADANMOHANBHAI AND OTHERS

Appearance:

IN FIRST APPEAL NOS.3422 of 1999 to 3447 of 1999

MR KG SHETH, Ld. AGP for Appellants

IN FIRST APPEAL NOS.6005 of 1998 to 6007 of 1998

MR AR MAJMUDAR for Appellants.

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CORAM : MR.JUSTICE M.H.KADRI

and  
MR.JUSTICE C.K.BUCH

Date of decision: 07/03/2000

COMMON ORAL JUDGEMENT [Per: Kadri, J.]

1. The appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to be as 'the Act') read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated March 27, 1998, rendered by the learned 3rd Extra Assistant Judge, Vadodara, in a group of Land Reference Cases Nos.95 to 111 of 1986, 113 to 120 of 1986 and 122 of 1986. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. Executive Engineer of Narmada Main Canal, Division No.3, Vadodara, made a proposal to the State Government by his letter dated 21, 1982, for acquisition of agricultural lands of village Vaniyadri, Tal. Sankheda, District Vadodara, for public purpose of the construction of Narmada Main Canal Project. The said proposal was scrutinized by the Government and notification to acquire lands of the claimants-respondents came to be issued under Section 4(1) of the Act, which came to be published in the Government Gazette on October 14, 1982. After following the usual procedure under the Act, declaration under Section 6 of the Act was made and which was published in the Government Gazette on September 16, 1983. Interested persons were, thereafter, served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation of the acquired lands at the rate of Rs. one lakh per hecter, but, having regard to the materials placed before him, the Land Acquisition Officer made his award on April 26, 1985, and offered compensation to the claimants at the rate of Rs.10,000/- per hecter for non-irrigated lands and Rs.15,000/- per hecter for irrigated lands for acquired lands of village Vaniyadri. The Land Acquisition Officer had also offered compensation for eucalyptus trees according to the age of the trees. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Vadodara, which were numbered as Land Reference Cases Nos. 95 to

111 of 1986, 113 to 120 of 1986 and 122 of 1986. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No.95 of 1986.

3. Before the Reference Court also, the claimants claimed compensation at the rate of Rs.1 lakh per hecter. To substantiate their claim of compensation of acquired lands, the claimants examined (i) Ashokkumar Madanmohanbhai Patel at Exh.10 (claimant of Land Reference Case No.107/86), (ii) Baria Chhitabhai Dhedubhai at Exh.59, (iii) Jivanbhai Lallubhai Patel at Exh.63, (iv) Mathurbhai Mohanbhai Tadvi at Exh.64. On behalf of the appellants, Deputy Mamlatdar Pankajbhai Balubhai Shah, who was working in the Land Acquisition Office was examined at Exh.68. The claimants produced documentary evidence such as certified copy of the abstract of revenue record, sale deed dated 1.1.1982 at Exh.31, in respect of non-irrigated lands of Block No.61 of village Vaniyadri. The Reference Court on the oral as well as documentary evidence determined the market value of the acquired lands treating them as irrigated lands and awarded compensation at the rate of Rs.60,000/- per hecter. The Reference Court did not award compensation with respect to eucalyptus trees standing on the acquired lands at the time of acquisition. The claimants have challenged the common judgment and award of the learned 3rd Extra Assistant Judge, Vadodara, by filing First Appeals Nos.6005, 6006 and 6007/99 claiming enhanced compensation for the trees.

4. Learned AGP Mr.K.G.Sheth has taken us through the entire evidence produced in record of these appeals and has vehemently submitted that the Reference Court had erred in placing reliance on sale deed at Exh.31, which was in respect of Block No.61 ad-measuring 0 hector 80 Are equivalent to 2 Acres. That the lands of sale deed Exh.31 were not at all comparable and relevant for determination of market value of the present acquired lands. Learned AGP further submitted that the compensation offered by the Land Acquisition Officer was just and reasonable and the Reference Court ought not to have enhanced it by offering compensation at the rate of Rs.60,000/- per hecter. Counsel for the Government submitted that determination of market value by the Reference Court is excessive and therefore these appeals should be allowed.

5. Mr.A.R.Majmudar, learned counsel for the respondents has submitted that, the Reference Court has awarded just and reasonable compensation to the

respondents-claimants for their lands which came to be acquired. He further submitted that sale deed Exh.31 was related to land of the same village and which was executed in the near proximity of time with the issuance of the notification under section 4(1) of the Act. He further submitted that the Reference Court was justified in placing reliance on sale deed Exh.31, which was in all respects relevant and comparable for the determination of market value of the acquired lands. At the end, the counsel for the respondents submitted that, a just and reasonable compensation was awarded to the claimants and, therefore, the appeals may be dismissed with costs. Learned Counsel for the claimants contended that the Reference Court erred in not awarding compensation for eucalyptus trees and hence First Appeals filed by the claimants for enhanced compensation for trees be allowed.

6. The contentions raised by learned Counsel for the Government that the compensation determined by the Reference Court is on a higher side and the Reference Court had erred in relying sale deed Exh.31 deserves to be rejected. The claimants witness Ashokkumar Madanmohanbhai Patel Exh.10 had described the situation and fertility of the lands under acquisition. As per evidence of this witness, the acquired lands were more fertile and the agriculturists were taking three crops in a year. He further deposed that village Vaniyadri was situated at a distance of 5 k.m. from village Bodeli and, therefore, village Vaniyadri was developed one, having facilities of electricity. He also stated in the village Vaniyadri there were 7 Ginning Factories, 10 pipe factories and also having facilities of Arts college, School, Theater and Government Hospitals in the village. He deposed that there was a rapid development in the surrounding villages Bodeli, Vaniyadri, Aladpura. During his deposition, the witness produced sale deed Exh.31 which was in respect of Block No.61. The witness deposed that lands of Block No.61 ad-measuring 2 Acres was sold to Koli Babarebhai Maganbhai and his brother for a consideration of Rs.40,000/- at the rate of Rs.20,000/per Acre. The sale deed Exh.31 was duly proved by the witness Ashokkumar Madanmohanbhai Patel. As per the sale deed Exh.31, price of the agricultural land which were non-irrigated land comes to Rs.20,000/- per Acre, equivalent to Rs.50,000/- per hector as on 2.1.1982. Notification under the present appeals under section 4(1) of the Act was issued on October 14, 1982 and, therefore, there was a gap of nearly 8 months between the execution of the sale deed and the notification issued under Section 4(1) of the Act. Furthermore, the lands which were subject matter of sale deed Exh.31 were

non-irrigated lands whereas present acquired lands were irrigated lands. It is a settled legal principle that price of irrigated lands fetch more price than non-irrigated lands. Taking into consideration the time lag between the sale deed and notification, and further more the lands acquired were irrigated lands, in our opinion, determination of market value of the acquired lands by the Reference Court at the rate of Rs.60,000/per hecter cannot be said to be excessive. We hold that the Reference Court had awarded just, adequate and reasonable compensation to the claimants for the acquired lands. Learned counsel for the respondents has placed reliance on the decision reported in AIR 1971 SC page 1253, in support of his submission that because of acquisition of the agricultural lands of village Vaniyadri for the purpose of construction of Narmada Main Canal Project, price of the lands at Village Vaniyadri had increased and the court should take judicial notice of that fact and the court should also give gradual rise in price for lands under acquisition. It is borne out from the record of this case that large extent of agriculture lands came to be acquired in village Vaniyadri for the public purpose of construction of Narmada Main Canal in the year 1983. Because of the acquisition of large extent of area of agricultural lands of village Vaniyadri price has increased. The lands which were the subject matter of the sale deed Exh.31 were sold in January 1982 at the rate of Rs.50,000/- per hecter. Notification under section 4(1) of the Act for the acquisition of the present acquired lands came to be published in October 1982. Therefore there was gap of 10 months between execution of sale deed and issuance of notification under Section 4(1) of the Act. After a rise in price of 10 months is given to the sale price of sale deed Exh.31 the determination of the compensation by the Reference Court cannot be said to be excessive. Furthermore, the lands in sale deed Exh.31 were non-irrigated lands whereas the present acquired lands are irrigated lands. Judging from any angle, determination of market value of the acquired lands at the rate of Rs.60,000/- per hecter cannot be said to be excessive or on a higher side. The statutory benefits extended in favour of the respondents under the Act namely under Section 23-1A, 23-2 and interest under section 28 is also just and proper. Hence, no interference is required to be called for.

7. The original claimants have claimed enhanced compensation for the eucalyptus trees which were standing on the acquired lands at the time of acquisition. The Land Acquisition Officer had offered compensation for the said trees according to their age. The Reference Court

had rejected the claim for enhanced compensation with regard to eucalyptus trees, pipelines etc. The claimants had failed to lead cogent and reliable evidence in support of their claim for enhancement compensation with regard to eucalyptus trees. We do not find any evidence on the record of these appeals justifying the claim of the claimants with regard to enhancement of compensation of the eucalyptus trees, pipelines etc. Counsel for the claimants have also not seriously pressed the claim for enhanced compensation with regard to eucalyptus trees, pipelines etc.

8. It is shocking that the other adjoining lands of same village in which the Reference Court had awarded uniform compensation for the acquired lands for the same acquisition, the State Government or the acquiring body have not challenged the common judgement and award of the Reference Court rendered in Land Ref. Cases Nos.1/87 to 12/87. The above reference cases were disposed of by an identical award by the Reference Court but as they were two separate land acquisition cases i.e. 27/82 and 28/82 the Reference Court had decided two groups separately. Learned Counsel for the respondents has brought to our notice that six claimants namely 1)Narsinh Kalyansinh 2) Patel Narendra Madanmohan 3) Ashok Madanmohan 4) Moteshwar Madanmohan 5) Bhurabhai Bapubhai 6) Sanabhai Mathurbhai, who are common in both the group of Land Reference Cases have been treated with discrimination as compared to other claimants because reference cases which arose from Land Acquisition Case No.28/82, the State Government and the acquiring body had not challenged the common judgment and award of the Reference Court. Counsel for the respondents has brought to our notice from the Map Exh. 69 that the common judgment and award which was not challenged by the State Government and the acquiring body was in respect of the lands which were far away from the village Vaniyadri whereas acquired lands of the present appeals are situated nearer to the village. This discriminatory treatment given to the claimants of the same village requires to be deprecated. Admittedly the lands of both the two reference cases were having same fertility and were situated in the same village. There cannot be two determination of market value with regard to land which are the subject matter of the present appeals, and the common judgment and award which was not challenged by the State Government and the acquiring body which related to the lands of same village.

9. For the foregoing reasons, the common judgment and award dated 27th March, 1998, passed by the learned

3rd Extra Assistant Judge, Vadodara in Land Reference Cases Nos.95 to 111/86, 113 to 120/86 and 122/86 is confirmed. The appeals filed by the State of Gujarat are dismissed with no order as to costs.

10. First Appeals No.6005/99 to 6007/99 filed by the original claimants are also dismissed with no order as to costs.

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